

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

|  |   |                  |
|--|---|------------------|
| <b>BETTY MAE HANZEL,</b>                   | ) |                  |
|  | ) |                  |
| <b>Plaintiff,</b>                          | ) |                  |
|  | ) | <b>8:05CV435</b> |
| <b>vs.</b>                                 | ) |                  |
|  | ) | <b>ORDER</b>     |
| <b>LIFE CARE CENTERS OF AMERICA, INC.,</b> | ) |                  |
| <b>a Tennessee corporation, and</b>        | ) |                  |
| <b>CONSOLIDATED RESOURCES HEALTH</b>       | ) |                  |
| <b>CARE FUND I, a Georgia Limited</b>      | ) |                  |
| <b>Partnership,</b>                        | ) |                  |
|  | ) |                  |
| <b>Defendants.</b>                         | ) |                  |

This matter is before the court on defendants' motion to strike plaintiff's request for punitive damages (Filings 8 & 9). The complaint alleges claims for negligence; negligent and/or fraudulent misrepresentations and omissions; negligent hiring, supervision and retention; and breach of contract in conjunction with the plaintiff's residence and care at Life Care Center of Elkhorn. In addition to compensatory damages and costs, the plaintiff seeks an award of "punitive damages as provided by Tennessee law and Georgia law."

Defendants move to strike the request for punitive damages on the ground that "under Nebraska law, as a matter of law and public policy, punitive damages are not allowed." On the face of the complaint, and having considered plaintiff's response to the Motion to Strike (Filing 10), it is apparent that the plaintiff has not requested an award of punitive damages under Nebraska law. Since the court has not yet determined whether any or all of the issues presented in this case are governed solely by Nebraska law,

**IT IS ORDERED** that the Motion to Strike (Filing 10) is denied without prejudice to reassertion, if appropriate, at a later time.

**DATED October 7, 2005.**

**BY THE COURT:**

**s/ F.A. Gossett**  
**United States Magistrate Judge**